

REMARKS

The Office Action dated June 25, 2004, has been received and carefully considered. In this response, claims 21 and 22 have been added. Entry of added claims 21 and 22 is respectfully requested. Reconsideration of the outstanding rejections in the present application is also respectfully requested based on the following remarks.

I. **THE OBVIOUSNESS REJECTION OF CLAIMS 1-20**

On page 2 of the Office Action, claims 1-20 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Takashima et al. (U.S. Patent No. 6,563,794) in view of Naegeli et al. (U.S. Patent No. 6,574,797). This rejection is hereby respectfully traversed.

As stated in MPEP § 2143, to establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim

limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure. In re Vaeck, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

Regarding claim 1, the Office Action asserts that "Takashima disclosed a method for data transmissions from a server, comprising the steps of - b) determining the maximum bandwidth for the at least one data transmission (col. 33, lines 59-67); c) determining a delay for the at least one data transmission based on the maximum bandwidth specified; and (d) transmitting the at least one data transmission after the delay has expired (col. 245, lines 26-31)."

The Office Action also asserts that Takashima does not "disclose in detail a) configuring a maximum bandwidth for at least one data transmission," but that "Naegeli disclos[es] the upstream receiver and related hardware components are designed or configured to receive data at the maximum bandwidth at the maximum symbol rate (col. 8, lines 35-38). The Office Action asserts that "[i]t would have been obvious to one having ordinary skill in the art at the time the invention was made to have incorporated the upstream receiver and related hardware components are (sic) designed or configured to receive data at the maximum bandwidth at the maximum symbol rate in the method

of Takashima to reduce the congestion during transmission of the data packet and allocation of the bandwidth make it more efficient during data transmission."

However, Applicants respectfully submit that Takashima does not teach or suggest "determining a delay for the at least one data transmission based on the maximum bandwidth specified," as expressly recited in independent claim 1. Rather, the portion of Takashima cited by the Office Action as disclosing this limitation merely states that it is difficult to determine the maximum bandwidth for a maximum delay guarantee service:

However, this system has a disadvantage from the viewpoint of an effective bandwidth use. Additionally, since it is difficult to determine the maximum bandwidth for a maximum delay guarantee service which must reference the parameters of receiver resource requests, attention must be paid when this system is utilized.

See, Takashima patent, Col. 25, lines 26-31. Applicant respectfully submits the above referenced excerpt from Takashima does not teach or suggest "determining a delay for the at least one data transmission based on the maximum bandwidth specified," as expressly recited in independent claim 1.

Moreover, Applicants respectfully submit that Naegeli does not teach or suggest "configuring a maximum bandwidth for at least one data transmission," as expressly recited in claim 1. Rather, the portion of Naegeli cited by the Office Action as

disclosing this limitation merely states that an "upstream receiver and related hardware components are designed or configured to receive data at the maximum bandwidth at the maximum symbol rate." See Naegeli patent, Col. 8, lines 35-38. Applicants respectfully submit, however, that such a teaching is not the same as "configuring a maximum bandwidth for at least one data transmission," as recited in independent claim 1.

Further, Applicants respectfully submit the Office Action fails to set forth a proper motivation to combine the disclosures of Takashima and Naegeli. The cited motivation is based on hindsight from viewing the claims of the present application. Thus, Applicant respectfully submits that Office Action fails to meet the burden necessary to establish a *prima facie* obviousness rejection.

Independent claim 11 recites related subject matter to the above-identified independent claim, and is therefore allowable for reasons similar to those given above.

Claims 2-10, 12-22 are dependent upon either independent claim 1 or 11. Thus, since independent claims 1 and 11 should be allowable as discussed above, claims 2-10, 12-22 should also be allowable at least by virtue of their dependency on independent claim 1 or 11. Moreover, these claims recite additional features which are not claimed, disclosed, or even

suggested by the cited references taken either alone or in combination. For example, dependent claim 21 teaches "wherein the maximum bandwidth is specified by a user." Applicants respectfully submit neither Takashima nor Naegeli, alone or in combination, teach or suggest such a feature.

In view of the foregoing, it is respectfully requested that the aforementioned obviousness rejection of claims 1-20 be withdrawn.

II. CONCLUSION

In view of the foregoing, it is respectfully submitted that the present application is in condition for allowance, and an early indication of the same is courteously solicited. The Examiner is respectfully requested to contact the undersigned by telephone at the below listed telephone number, in order to expedite resolution of any issues and to expedite passage of the present application to issue, if any comments, questions, or suggestions arise in connection with the present application.

To the extent necessary, a petition for an extension of time under 37 CFR § 1.136 is hereby made.

Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 50-0206, and please credit any excess fees to the same deposit account.

Patent Application
Attorney Docket No.: 56130.000064
Client Reference No.: 12693RXUS01U

Respectfully submitted,

Hunton & Williams LLP

By:

Thomas E. Anderson

Registration No. 37,063

TEA/OAF/dja

Hunton & Williams LLP
1900 K Street, N.W.
Washington, D.C. 20006-1109
Telephone: (202) 955-1500
Facsimile: (202) 778-2201

Date: September 27, 2004